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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 VALLEY FRUIT ORCHARDS, LLC and )  
8 GREEN ACRE FARMS, INC., )

9 Plaintiffs, )

10 -vs- )

11 GLOBAL HORIZONS MANPOWER, )  
12 INC., MORDECHAI ORIAN, PLATTE )  
13 RIVER INSURANCE COMPANY and )  
14 ACCREDITED SURETY AND )  
CASUALTY COMPANY, INC., )

Defendants. )

NO. CV-09-3071-RMP

ORDER GRANTING  
DEFENDANTS' MOTION TO  
TAKE JUDICIAL NOTICE AND  
DENYING DEFENDANTS'  
MOTION(S) TO DISMISS

15 Before the Court for hearing without oral argument are Defendants' Amended Motion to  
16 Dismiss Complaint (Ct. Rec. 12)<sup>1</sup> and Defendants' Motion to Take Judicial Notice (Ct. Rec.  
17 14) filed September 4, 2009. Plaintiffs' response to the Amended Motion to Dismiss  
18 Complaint was filed September 15, 2009 (Ct. Rec. 19). Defendants' Reply on the Motion  
19 to Dismiss was filed September 18, 2009 (Ct. Rec. 20). Plaintiffs did not file any objection  
20 to Defendants' Motion to Take Judicial Notice.

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<sup>1</sup> The original Motion to Dismiss Complaint was filed September 3, 2009, (Ct. Rec. 6) and is still a pending motion that will be terminated when the Amended Motion is resolved by this Order.

## I. PROCEDURAL HISTORY

Plaintiffs' Complaint was originally filed in Yakima County Superior Court on June 2, 2009. Defendants removed the action to Federal Court on August 5, 2009 (Ct. Rec. 1) based upon diversity jurisdiction. No answer has been filed.

The Complaint asserts that Plaintiffs, Valley Fruit Orchards, LLC and Green Acre Farms, Inc. are growers in Yakima County, Washington [hereinafter referred to as "Growers"]. Defendant Global Horizons Manpower, Inc. and its officer Mordechai Orian are farm labor contractors [hereinafter referred to as "Global"] that provided farm laborers to the Growers under contracts. The Complaint further asserts that Platte River Insurance Company and Accredited Surety and Casualty Company, Inc. issued surety bonds to Global to secure Global's performance during the contract period. The Complaint lists four causes of action: 1) breach of contract; 2) contribution and indemnity; 3) alter ego; and 4) surety.

The Defendants' Motion to Dismiss asserts that the action is barred by the California statute of limitations and that Defendants have no contractual duty to indemnify Plaintiffs. The Defendants' Motion to Take Judicial Notice requests that the Court take judicial notice of: 1) the contracts between the parties; and 2) judicial records of this Federal District Court.

## II. DISCUSSION

Rule 12(b)(6) Standard. Defendants move to dismiss the Plaintiffs' claims pursuant to the Federal Rule of Civil Procedure 12(b)(6). The Rule provides for dismissal of a cause of action for "failure to state a claim upon which relief can be granted . . . ." Federal Rule of Civil Procedure 12(b)(6) (West 2009). The issue is not whether the plaintiff is likely to succeed on the merits, but only if the complaint is legally sufficient to entitle the plaintiff to proceed beyond the pleadings in an attempt to establish his claim. *De La Cruz v. Tormey*, 582 F.2d 45, 48 (9th Cir. 1978). The plaintiff's material allegations in the complaint must be accepted as true, and the complaint is construed in the light most favorable to him. *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1988). A motion

1 to dismiss is generally disfavored "and doubts should be resolved in favor of the pleader."  
 2 *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976).

3 Evidence outside of the pleadings is not normally considered in deciding a Rule  
 4 12(b)(6) motion. The Rule provides in relevant part:

5 [i]f . . . matters outside the pleading are presented to and not excluded by the court,  
 6 the motion shall be treated as one for summary judgment under Rule 56. All  
 7 parties must be given reasonable opportunity to present all material that is  
 8 pertinent to the motion.

9 Fed. R. Civ. P. 12(d) (West 2009).

10 There are, however, two exceptions to the requirement that consideration of  
 11 extrinsic evidence converts a 12(b)(6) motion to a summary judgment motion.  
 12 First, a court may consider material which is properly submitted as part of the  
 13 complaint on a motion to dismiss without converting the motion to dismiss into a  
 14 motion for summary judgment. If the documents are not physically attached to the  
 15 complaint, they may be considered if the documents' authenticity is not contested  
 16 and the plaintiff's complaint necessarily relies on them. Second, under  
 17 Fed.R.Evid. 201, a court may take judicial notice of matters of public record.

18 *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)(internal quotations, ellipses  
 19 and citations omitted).

20 Motion to Take Judicial Notice. Here, Defendants have filed a Motion to Take  
 21 Judicial Notice of the contracts between the parties and the public records of this Federal  
 22 District Court. Defendants provided copies of the contracts between each Grower and  
 23 Global.<sup>2</sup> The Complaint necessarily relies on the contracts for the breach of contract  
 24 claims and the Growers did not contest the authenticity of the contracts. The Court shall

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25 <sup>2</sup> The contract between Global and Green Acre Farms, Inc, was for the term of  
 26 February 2, 2004 until November 5, 2004, and was unsigned by Green Acre Farms, Inc. (Ct.  
 Rec. 15-2, Exhibit A). The contract between Global and Valley Fruit Orchards, LLC was for  
 the term of January 1, 2005 until November 1, 2005 (Ct. Rec. 15-3, Exhibit B).

1 therefore take judicial notice of the contracts and consider them on this Motion to  
2 Dismiss. *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980)(a court may take  
3 judicial notice of facts that are not subject to reasonable dispute). By so doing the Motion  
4 to Dismiss is not converted to a summary judgment motion. *Lee*, 250 F.3d at 688.

5 Defendants also requested that the Court take judicial notice of the public records of  
6 this Federal District Court related to *Perez-Farias v. Global Horizons, Inc., et al.*, CV-  
7 05-3061-RHW and *Nasee v. Global Horizons, Inc., et al.*, CV-06-3048-RHW.

8 Defendants provided a copy of a Stipulated Pretrial Order from *Nasee v. Global*  
9 *Horizons, Inc., et al.*, CV-06-3048-RHW (Ct. Rec. 139)<sup>3</sup> and a copy of an Order from  
10 *Perez-Farias v. Global Horizons, Inc., et al.*, CV-05-3061-RHW (Ct. Rec. 507).<sup>4</sup> Both  
11 cases are cited in the Complaint by the Plaintiffs. Again, the Court shall take judicial  
12 notice of the public records and consider the records on this Motion to Dismiss. *See*  
13 *MGIC Indem. Corp v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986). By so doing the  
14 Motion to Dismiss is not converted to a summary judgment motion. *Lee*, 250 F.3d at 688.

15 Standard for Pleading of Complaint. Defendants originally argued that the Plaintiffs'  
16 Complaint was subject to dismissal because the pleading was not in compliance with the  
17 California rules. Plaintiffs correctly argued that the Federal Rules of Civil Procedure  
18 apply, specifically Rule 8(a). A federal court sitting in diversity applies state substantive  
19 law and federal procedural law. *Feldman v. Allstate Ins. Co.*, 322 F.3d 660, 666 (9th Cir.  
20 2003). Thus, the Federal Rules of Civil Procedure will apply in federal court even if the  
21 source of subject matter jurisdiction is diversity. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d  
22 1097, 1102 (9th Cir. 2003).

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25 <sup>3</sup> The Stipulated Order is Ct. Rec. 15-4, Exhibit C.

26 <sup>4</sup> The Order is Ct. Rec. 20-2, Exhibit A.

1 Federal Rule of Civil Procedure 8(a) creates a liberal pleading standard that only  
2 requires a short and plain statement of the grounds for the court's jurisdiction, a short and  
3 plain statement of the claim showing that the pleader is entitled to relief, and a demand for  
4 the relief sought. Federal Rule of Civil Procedure 8(a); *See McGary v. City of Portland*,  
5 386 F.3d 1259, 1262 (9th Cir. 2004). Here, the Complaint contains all of the required  
6 elements under this liberal notice pleading standard and is not subject to dismissal on the  
7 basis that it failed to satisfy the California pleading requirements.

8 Statute of Limitations for Plaintiffs Claims. It is undisputed by the parties that the  
9 applicable statute of limitations for a claim of breach of a written contract, as asserted in  
10 this case, is four years pursuant to the California Code of Civil Procedure § 337(1). The  
11 Growers filed suit in state court on June 2, 2009. To be timely filed the cause of action  
12 would have had to accrue on or after June 3, 2005.

13 It is also established by stipulation in another case in this District, that after the  
14 Growers contracted with Global to provide laborers for the Growers, the Growers learned  
15 in July of 2004 that Global did not have a Farm Labor Contractor License. In addition,  
16 the Growers stipulated that they continued to use Global's services even after learning that  
17 Global did not have the license. Stipulated Pretrial Order, *Nasee v. Global Horizons*  
18 *Manpower, et al.*, CV-06-3048-RHW, filed 9/5/08, Ct. Rec. 139, paragraph 12.

19 Finally, as noted in the Complaint, on or after June 3, 2005, the Growers learned that  
20 the State of Washington alleged that Global had violated the provisions of the Farm Labor  
21 Contractor Act [FLCA], WASH. REV. CODE § 19.30 et seq. Complaint, paragraph 16.

22 So the issue is whether the Growers' cause of action accrued only when the State  
23 alleged the FLCA violations as Plaintiffs suggest, or whether it accrued when the Growers  
24 discovered that Global did not have the required Farm Labor Contractor License as  
25 Defendants suggest. If it is the former, then the suit was filed within the statute of  
26 limitations. If it is the later, the suit is time barred.

1 Under California law a plaintiff must file suit after the accrual of a cause of action  
2 within the applicable statute of limitations. *Norgart v. Upjohn Co.*, 21 Cal.4th 383, 397  
3 (1999). A cause of action accrues when the cause of action is complete with all of its  
4 elements. *Id.* The elements for a breach of contract claim "are the existence of the  
5 contract, performance by the plaintiff or excuse for nonperformance, breach by the  
6 defendant and damages." *First Commerical Mortgage Co. v. Reece*, 89 Cal. App.4th 731,  
7 745 (2001). "An exception to the general rule for defining the accrual of a cause of  
8 action-indeed, the "most important" one-is the discovery rule." *Norgart*, 21 Cal.4th at  
9 397. "Under the discovery rule, suspicion of one or more of the elements of a cause of  
10 action, coupled with knowledge of any remaining elements, will generally trigger the  
11 statute of limitations period." *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 807  
12 (2005). The statute of limitations is not tolled by the plaintiff's ignorance of the cause of  
13 action. *April Enterprises, Inc. v. KTTV*, 147 Cal. App. 3rd 805, 826 (1983).

14 Here, it is undisputed that the Growers knew of Global's failure to obtain the License  
15 required by the FLCA in July 2004. Thus, the Growers knew of the alleged breach of  
16 contract by Global and arguably should have been suspicious of possible harm or  
17 damages. Had they examined the FLCA, WASH. REV. CODE § 19.30 et seq., they would  
18 have noted the license requirement (WASH. REV. CODE § 10.30.020); that there were  
19 criminal and civil penalties for violations of any provisions of the Act ( WASH. REV. CODE  
20 § § 19.30.150 and 160) and that any one who knowingly used an unlicensed farm labor  
21 contractor, would be jointly and severally liable with the unlicensed farm labor contractor  
22 (WASH. REV. CODE § 19.30.200). But, whether the Growers exercised reasonable  
23 diligence in making this inquiry and discovering their cause of action presents a question  
24 of fact which the Court cannot decide on this Motion to Dismiss. *Cleveland v. Internet*  
25 *Specialties West, Inc.*, 171 Cal. App.4th 24, 31 (2009)("It is plaintiff's burden to show he  
26 was not negligent in failing to discover his injury sooner, and whether he exercised

1 reasonable diligence is a question of fact for the court or jury to decide. ") (internal  
2 quotations omitted).

3 Defendants' Reply brief sets forth another theory in support of the Motion, in addition  
4 to the Growers' knowledge in July 2004 of Global's lack of a license. Defendants  
5 correctly note that the Court has determined that Global was an agent of the Growers.  
6 CV-05-3061-RHW, Ct. Rec. 507, p. 27, ll. 1-4. Under California agency law knowledge  
7 acquired by an agent while acting within the course and scope of his employment is  
8 chargeable to his principal. *Mountain Copper Co. v. Welcome Growers Gin Co.*, 197 Cal.  
9 App.2d 253, 257 (1961). This is true even if the agent fails to advise the principal of the  
10 information. *O'Riordan v. Federal Kemper Life Assur.*, 36 Cal.4th 281, 288 (2005). Thus,  
11 the Growers, as the principals, would be imputed to have all the information that Global,  
12 their agent, possessed. A factual question still remains however: what knowledge did  
13 Global have that can be imputed to the Growers, regarding the potential harm faced by the  
14 Growers due to Global's failure to have the license. Global obtained the required FLCA  
15 license in October of 2004. Did Global, and therefore the Growers, know that there were  
16 criminal and civil penalties for someone operating without a license under FLCA, or that  
17 any one who knowingly used an unlicensed farm labor contractor, would be jointly and  
18 severally liable with the unlicensed farm labor contractor. These factual questions  
19 preclude the Court from dismissing the Complaint based on Defendants' assertion that the  
20 breach of contract claim is time barred. The same reasoning applies to the other claims  
21 that the Defendants assert are also barred by the California statute of limitations.

22 Defendants also assert that the contracts between the parties do not provide for  
23 indemnification of the Growers by Global and that claim 2 of the Complaint for  
24 contribution and indemnification must therefore be dismissed. At this stage of the  
25 proceedings the Court is reluctant to determine that claim 2 is legally insufficient and that  
26 the Growers may not proceed beyond the pleadings in an attempt to establish their claim.



### III. CONCLUSION

On Defendants' Motion to Dismiss the Court may take judicial notice of contracts referred to in the Complaint and public records of the District Court without converting the motion to one for summary judgment. Under the liberal pleading requirements of Rule 8(a), the Complaint is not subject to dismissal. The Defendants' Motion to Dismiss must be denied as the Court determines that the Complaint is legally sufficient and entitles the Growers to proceed beyond the pleadings in an attempt to establish their claims. Accordingly,

**IT IS ORDERED** that:

1. Defendants' Motion to Take Judicial Notice, filed September 4, 2009, **Ct. Rec. 14** is **GRANTED**.
2. Defendants' Amended Motion to Dismiss Complaint, filed September 4, 2009, **Ct. Rec. 12** and Motion to Dismiss Complaint, filed September 3, 2009, **Ct. Rec. 6** are **DENIED**.

The District Court Executive is directed to file this Order and provide copies to counsel of record.

**DATED** this 26th day of March, 2010.

*s/Rosanna Malouf Peterson*  
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ROSANNA MALOUF PETERSON  
United States District Court Judge